



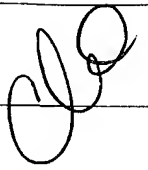
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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/726,462	12/03/2003	Michael Wade Gaston	82274.92	5878
24347	7590	04/14/2004	EXAMINER	
HUNTON & WILLIAMS LLP 1601 BRYAN STREET ENERGY PLAZA - 30TH FLOOR DALLAS, TX 75201			BRINSON, PATRICK F	
			ART UNIT	PAPER NUMBER
			3752	

DATE MAILED: 04/14/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/726,462	Applicant(s) GASTON ET AL.	
	Examiner Patrick F. Brinson	Art Unit 3752	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date ____. | 6) <input type="checkbox"/> Other: ____. |

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 19 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 19 recites "the hingeable coupling" without proper antecedent basis.

Double Patenting

2. A rejection based on double patenting of the "same invention" type finds its support in the language of 35 U.S.C. 101 which states that "whoever invents or discovers any new and useful process ... may obtain a patent therefor ..." (Emphasis added). Thus, the term "same invention," in this context, means an invention drawn to identical subject matter. See *Miller v. Eagle Mfg. Co.*, 151 U.S. 186 (1894); *In re Ockert*, 245 F.2d 467, 114 USPQ 330 (CCPA 1957); and *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970).

A statutory type (35 U.S.C. 101) double patenting rejection can be overcome by canceling or amending the conflicting claims so they are no longer coextensive in scope. The filing of a terminal disclaimer cannot overcome a double patenting rejection based upon 35 U.S.C. 101.

3. Claims 17, 18 and 20 are rejected under 35 U.S.C. 101 as claiming the same invention as that of claims 5, 6 and 10, respectively, of prior U.S. Patent No. 6,675,836. This is a double patenting rejection.

Claim 17 recites the limitations of claim 4 of U.S. Patent No. 6,675,836 with the exception of reciting "actuator" where claim 4 of the '836 patent recites "means". Claim 5 of the '836 patent recites the means as being an actuator coupled to the first boom, while claim 17 recites the actuator as being coupled to at least one of the first and second booms. The fact that the actuator can be connected to the first boom makes the invention of claim 17 the same as that recited in claim 5 of the '836 patent. Similarly, claim 10 of the '836 reference recites the first and second coupling portions of the first and second booms are further defined as pivotally coupled to one another. Claim 18 of the instant application recites the coupling portion is a hingeable coupling. A pivotal coupling would encompass an hingeable coupling. Furthermore, claim 6 of the '836 reference recites that the actuator is connected to both first and second booms, as recited in claim 20 of the instant application.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless —

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 4, 5 and 7-13 are rejected under 35 U.S.C. 102(b) as being anticipated by **Merrill et al '417**.

The patent to **Merrill et al '417** discloses a clamp for sealing pipe leaks including a first boom (16) having a first end, a second end (24) and a pipe engaging portion (12) adjacent the second end. A second boom (17) is also disclosed having a first end, a second end (28) and a pipe engaging portion (27) adjacent the second end, wherein the first and second booms are coupled such that the pipe engaging portions of the first and second end are positioned to cooperate about a leak portion of the pipe and the first end of the first boom may be moved apart from the first end of the second boom. Lever (21) functions as the actuator to move the first end of first boom apart from the first end of the second boom, thereby allowing selective engagement of the first and second pipe engaging portions about the leak portion (11) of the pipe, as recited in claims 1, 4 and 9-12. The lever is connected to the first boom by pivot pin (20), as recited in claims 5 and 13. First and second booms are shown as being connected through hingeable coupling (19), as recited in claims 7-9.

5. Claims 1 and 4-14 are rejected under 35 U.S.C. 102(b) as being anticipated by **Motta et al**.

The patent to **Motta et al.** discloses a clamp for sealing pipe leaks including a first boom having a first end (7), a second end (5) and a pipe engaging portion (2) adjacent the second end. A second boom is also disclosed having a first end (6), a second end (5) and a pipe engaging portion (1) adjacent the second end, wherein the first and second booms are coupled such that the pipe engaging portions of the first and second end are positioned to cooperate about a leak portion of the pipe and the first end of the first boom may be moved apart from the first end of the second boom. Hydraulic tool (13) functions as the actuator to move the first end of first boom apart from the first end of the second boom, thereby allowing selective engagement of the first and second pipe engaging portions about the leak portion of the pipe, as recited in claims 1, 4 and 9-12. The actuator (13) is connected to both the first and second booms, as recited in claims 5, 6, 13 and 14 with first and second booms being connected through hingeable coupling (10), as recited in claims 7 and 8.

6. Claims 1-16 are rejected under 35 U.S.C. 102(b) as being anticipated by

Sanders et al.

The patent to **Sanders et al.** discloses a pipe repair clamp including a first boom comprising elements (22, 12) having a first end, second end and a pipe-engaging portion (18) at the second end. A second boom (14) having a first end, second end, and a pipe engaging portion (18). The first and second

booms are hingeably coupled at (16) such that the pipe engaging portions of the first and second booms are positioned to cooperate about a leak portion of the pipe, and the hingeable coupling is adjacent the pipe engaging portions of the first and second booms. Fig. 1 discloses the first ends of the first and second booms being in close proximity to each other, and fig. 2A discloses the first ends of the booms after being moved apart thereby allowing selective engagement of the first and second pipe engaging portions (18) about the pipe. Actuator (26) is operably coupled to both the first and second booms. Hoisting ring (74) is provided so that the clamp may be conveniently handled by the manipulator arm of a robot or submarine of any desired type, and that the pipe clamp of this invention is designed for underwater use or for other remotely located applications by a robotic device.

Conclusion

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The patents to Merrill '621, Goad et al., McKenzie, Savard '842 and '451, Parrish, Hankila, Black, McCreary, Bennett et al., Jarnett, Haney, Willis et al., and Rogers, Jr. are all pertinent to Applicant's invention in disclosing pipe sealing/clamping devices. The patents to Youl and Boyadjieff are pertinent in disclosing material handling devices having similar structure to Applicant's invention.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to **Patrick F. Brinson** whose telephone number is (703) 308-0111. The examiner can normally be reached on M-F 7:30-3:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, **Michael Y. Mar** can be reached on (703) 308-2087. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Patrick F. Brinson
Primary Examiner
Art Unit 3752

P. F. Brinson
April 12, 2004